

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPURDIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, C.J.
HON'BLE SHRI V.K. SHRIVASTAVA J.

M.A. No.828 of 2006.

APPELLANT(NON-APPLICANT NO.3)

The New India Assurance Company Limited, 32 East cast Chamber first floor S.N. City Road T. Nagar, Chennai, Through : Divisional - Office, Divisional Manager, The New India Assurance Company Limited, Kuchery Chowk, Madina Building, Raipur, (C.G.)

Vs.

RESPONDENTS(APPLICANT 1)

1. Smt. Chanda Patel W/o. Late Dwarka Patel, aged - 24 years,

(APPLICANT No.2)

2. Rupesh Kumar Patel S/o. Late Dwarka Patel, aged - 4 years,

(APPLICANT No.3)

3. Ganshyam Patel S/o Late Dwarka Patel, aged - 50 years,

(APPLICANT No.4)

4. Smt. Bilasha Patel W/o Ghanshyam Patel aged 48 years, Res. No.(2) Minor-through-mother Smt. Chanda Patel (Res. No.1)

All are R/o- village - Sirpur, P.O. Balauda, Tahsil - Saraipali, Distt.- Mahasamund (C.G.)

(NON-APPLICANT No.1)

5. Inder Singh S/o Shri Mang Singh, Aged 24 years. R/O Nandia jasara, Osin, Jodhpur, Distt. - Jodhpur (Rajasthan) C/o M.P. transport, Hirapur Road, Mahoba Bazar, Raipur (C.G.) (Driver)

(NON-APPLICANT NO.2)

6. Rup Ram Choudhary S/o Naina Ram Choudhary Aged - 45 years, R/o- Near Krishna Mandir, Plot no. 157 - A, Bhagat Ki Kothi, Jodhpur, Distt. Jodhpur, (Rajasthan)

Present : Shri Dashrath Gupta, learned counsel for the appellant.

(21)

ORAL ORDER
(Passed on 28th August, 2006)

The following order of the Court was passed by

S.R. Nayak, C.J.

In this appeal preferred by the Insurance Company against the award passed by the MACT, the only contention urged by the learned standing counsel is that though in the income tax return filed by the deceased, a sum of Rupees 70,660/- is shown to be the income derived by the deceased by private tuition and other sources, the MACT is not justified in taking the said sum for the purpose of computing the loss of dependency. According to the learned standing counsel, income derived by the deceased from tuition and other sources would have varied from time to time and it could not be regarded as assumed income from a regular source. This was the only contention of the learned standing counsel before us. The deceased died at the age of 32 years, that is to say, relatively at a younger age. It is not a claim without any basis. The deceased himself disclosed his income derived by him from tuition and other sources in the return filed by him during the financial year 2004-05 during which he died in the accident. We can take judicial notice of the fact that generally speaking, such a man who could earn a sum of Rs.70,660/- from tuition and other sources during the year 2004-05, in course of time, he would have earned more income if he were to alive. Be that as it may, the discretion exercised by the fact-finding MACT cannot lightly be interfered with by the appellate Court unless a strong and weighty ground is made out for such interference. Nothing is placed before us to show that what the deceased declared in the income tax return as his income is fictitious and without basis. Looking from any

angle, no ground is made out for interference. The appeal is, therefore, dismissed.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge

Kandl